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Applicant:	John W. Forsberg; Mark E. Schommer; David P. Olson; William C. Phillips; Alex C. Toy; Charles R. Lewis, Jr.	Confirmation No.	9349
Serial No.:	10/693,005	Filed:	October 24, 2003
Examiner:	Christopher A. Flory	Group Art Unit:	3762
Docket No.:	1023-294US01	Customer No.:	28863
Title:	MEDICAL DEVICE PROGRAMMER WITH INFRARED COMMUNICATION		

CERTIFICATE UNDER 37 CFR 1.8 I hereby certify that this correspondence is being transmitted via facsimile to the United States Patent and Trademark Office on April 19, 2006.

By: Shirley A. Betlach  
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RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents  
Alexandria, VA 22313-1450

Dear Sir:

This response is to the Office Action mailed March 29, 2006. Claims 1-31 have been restricted under 35 U.S.C. § 121 as follows:

- I. 1-21, drawn to an apparatus comprising a patient programmer for an implantable medical device,
- II. Claims 22-31, drawn to a method for updating the software and operating system of a portable device using an infrared interface.

Applicants hereby elect Group I with traverse. In the Restriction Requirement, the Examiner stated that Group I and Group II are distinct inventions because the process as claimed (Group II) can be practiced by another and materially different apparatus or by hand, or the apparatus as claimed (Group I) can be used to practice another and materially different process. Applicants do not agree that the process of Group II can be practiced by another apparatus as independent claim 22 of Group II clearly recites a method of activating an infrared interface in a *medical device programmer* to initiate an infrared communication session. Furthermore,

Applicants do not agree that the apparatus of Group I can be used to practice another process as independent claim 1 of Group I clearly recites a medical device programmer with an *infrared interface* and a controller to control the infrared interface to initiate an *infrared communication session*.

In support of the restriction, the Examiner asserted that Group II claims a method for using an IR port to update the onboard software or operating system for a portable (i.e., handheld) device, which can be applied to cell phones, PDAs, MP3 player, game controllers, etc. However, Applicants' independent claim 22 specifically recites a method comprising activating an infrared interface in a *medical device programmer* to initiate an infrared communication session for a finite period of time in response to power-up of the *programmer*, and upon establishing the infrared communication session, receiving changes to software executed by a processor within the *programmer*. Applicants' claims 22-31 do not recite using an IR port to update software within a handheld device other than a medical device programmer.

The Examiner also asserted that the wireless capabilities of the medical device programmer claimed by Group I may be realized by different types of communication devices, such as an RF communication device. However, Applicants' independent claim 1 specifically recites a medical device programmer comprising an *infrared interface* to receive changes to software executed by a processor within the programmer during an *infrared communication session*, and a controller to control the *infrared interface* to initiate an *infrared communication session* for a finite period of time in response to power-up of the programmer. Applicants' claims 1-21 do not recite a medical device programmer including a communication device other than an infrared interface capable of initiating an infrared communication session.

Consequently, the restriction between Group I and Group II is improper and should be withdrawn.

Date:

4/19/06

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